Supreme Court, U.S.
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

In Re A. LIPKO JR.

V.

M. CHRISTIE, E. LIPKO

Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Second Circuit

PETITION FOR A WRIT OF CERTIORARI

A. LIPKO JR.
P. O. BOX 536
NEW HAVEN, CT 06503
(NO PHONE)

39 PP

QUESTIONS PRESENTED

1. Does Rooker v. Fidelity Trust Co. apply to this case, Lipko v. Christie, E. Lipko?

2. Does refusing to distribute the residue of the Estate after being ordered to distribute the residue on 8/14/95 by the Probate Judge (B. Joy), constitute FRAUD?

3. Does prosecution without probable cause initiated by defendants with false information in civil proceeding, with actual malicious purpose constitute a "seizure" necessary to establish his claim under 42 U.S.C.A. Sec. 1983 for deprivation of Liberty and property under the Fourth, Fifth, Eighth and Fourteenth Amendments?

LIST OF PARTIES

PETITIONER

A. LIPKO JR.
P.O. BOX 536
NEW HAVEN, CT 06503

RESPONDENTS:

M. CHRISTIE
1600 BEAN RD.
PLAINFIELD, VT

E. LIPKO
16 MAIN ST.
FORT PLAIN, NY
(LAST KNOWN ADDRESS)

ATTORNEY OF RESPONDENTS:

CHRISTINE GONILLO
185 N. BROAD ST.
MILFORD, CT 06460

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ORDERS

1. The Probate Judge (B. Joy) Ordered the Distribution of the Estate on 8/14/95.
2. The temporary injunction was denied on 4/8/96.
3. The State Superior Court, Judge Curran, after trial issued a permanent injunction NOT to appeal his Order to a higher Court on 8/15/97.
4. The State Appellate Court denied the permanent injunction on 12/10/97, but to do this, Lipko had to violate the Order of Judge Curran.
5. The State Appellate Court Ordered dismissal of appeal A.C. 17959, on 8/31/98.
6. The U.S. District Court dismissed on 8/18/99.
7. The U.S. Appeals Court dismissed on 4/6/00.
8. The Supreme Court of the United States Ordered petition for a Writ on 7/5/00, docketed on 11/29/00.
9. The U.S. Supreme Court of the United States Ordered not to hear Writ on 1/22/01.
10. State Superior Court Denial Vacation of Judgment, 9/10/01.
11. Appellate Dismissal of A.C. 22365 on 2/20/02.
12. Appellate Order of Monies Sanctions in the amount of $1,485.00, against Petitioner, on 3/20/02.
13. The State Superior Court Judge Monie J. Issued an Order to sell Plaintiff's family home on 6/15/02.

JURISDICTION

The statutory authority for issuance of extraordinary writ of the Court's Appellate Jurisdiction is 28 U.S.C. Section 1651(a), 2241 or 2254(a). A writ will be granted with respect to any claim that was adjudicated in a State court proceeding when the adjudication of the claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding; or (3) there is an absence of available State corrective process; or (4) circumstances exist that render such process ineffective to protect the rights of the applicant.

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1253. Direct appeal to the Supreme Court from any decision under Section 1253 of this Title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of ... final order, judgment or decree. The record shall be made up and the case docketed within sixty days from appeal taken.

The 2nd Circuit issued its certified judgment on June 13, 2002, and this petition for a writ of certiorari has been filed within 90 days of that date. The court has jurisdiction to review the 2nd circuit's decision under 28 U.S.C. 2101 &1253.

Petitioner invokes the jurisdiction of this court under 42 U.S.C. Sec. 1983 and 28 U.S.C. Sec. 1343(3a)(4), which applies equally to personal liberties or property rights; and that jurisdiction is not barred by some other statute. The Act of Congress is the substantive basis.

STATEMENT OF THE CASE

1. The Nature of the Case is an Estate. The Testator died on May 02, 1993. When the Petitioner produced bank accounts in the amount of $95,014.73, he was refused any opportunity in Probate, Superior, Appellate and Supreme Courts (App. 55) to have these bank accounts looked into. Malfeasance in the Estate involved the Succession Tax, which was filed 7 months late. Total taxes, Interest, including Penalty due: $22,208.11. First Attorney, Henry Maretz was removed by the Probate Judge (B. Joy). The Probate Judge himself resigned when the permanent injunction was issued 8/15/97. He had one year left to serve. Plus, Gonillo had the Family House sold before the Inventory was turned in to the Probate Judge.

2. On 8/14/95, the Probate Judge (B. Joy) closed the Estate and Ordered the Distribution of the Estate. App. 1-3. On or about 2/29/96, M. Christie had Sheriff W. Stuart serve on A. Lipko Jr./Defendant, an application for temporary or permanent injunction and count II vexatious litigation. App. 52-54. The purpose of the injunction was to prevent Defendant from appealing to a higher court to expose the material fact that the Probate Judge (B. Joy) closed the Estate on 8/14/95 and Ordered the distribution. Also, to have Defendant pay for all attorney fees and other estate costs. Gonillo, Christie and E. Lipko SEIZED Defendant, and then forced him to plead in the Superior Court Milford. (See Motion for TRO, dated 4/10/02, Exhibit I; Motions to Dismiss, Strike, Objection to Strike from Jury Docket, Dismissal for Lack of Diligence, Dismiss the Temporary Injunction). App. 36. All further reference to Exhibits can be found in the Motion for TRO. The temporary injunction was denied on 4/8/96. (App. 4-6, Tr. Rush, 4/8/96). All other Defendant's Motions were denied, and Defendant was FORCED to go to Trial, and was prosecuted, without probable cause, that they "could not close the Estate because Defendant keeps appealing." Gonillo and Christie kept

silent on the material fact that the Probate Judge closed the Estate on 8/14/95, and Ordered them to distribute the Residue of the Estate.(App. 7-11, Tr., Curran, 5/1/97).

3. The case was heard by the Court, Judge Curran, and on 8/15/97, Gonillo, Christie, and E. Lipko got a Fraudulent State Court Judgment, part of which states a claim for: "$43,638.55 in damages against Defendant, and Plaintiff/Christie has established a claim for vexatious litigation. However, the Court reserves decision of damages until a hearing in damages is held.... The Court therefore permanently enjoins the Defendant from filing any further motions and/or appeals to further delay the closing of the Estate." App.50,51. Gonillo, Christie and E. Lipko had no reasonable hope of obtaining the temporary or permanent injunction, and FORCED Defendant to appeal the judgment of the Superior Court to the Appellate Court, which denied the permanent injunction, 12/10/97. App.12.

4. The Case was removed to the District Court, by Plaintiff/Lipko on 8/28/98, by filing a Complaint for Abuse of Process and Malicious Prosecution. The District Court Dismissed on 8/18/99, and Appeal was taken to the 2nd Circuit. The Appeals Court affirmed the dismissal of the District Court on 4/6/00, and an Appeal was filed on 5/26/00 in the Supreme Court of the United States. The Supreme Court had jurisdiction from 4/6/00 to 1/22/01, finally denying Petition for Writ of Certiorari. App. 29.

5. Defendants/Gonillo were Ordered by the Supreme Court to file a Brief in Opposition on 11/29/00. Instead of filing a Brief, on 12/7/00, they filed an affidavit of closing the Estate with the Probate Court. The Probate Judge complied with Gonillo's wishes and accepted the affidavit of closing of the Estate, 5 1/2 years after Gonillo and Christie were Ordered to distribute the residue. The Probate Judge that accepted the affidavit of closing is a woman, but no distribution was made to this Beneficiary. App. 21.

6. Sometime in May, 2000, there was a hearing in damages in the State Court, Milford. Plaintiff avers that he was not under the subject matter jurisdiction or the personal jurisdiction of State Courts, because Plaintiff was under the jurisdiction of the Supreme Court of the United States; and he was not at the hearing in damages. (See Motion for TRO, Exhibits C,D & E).

7. The Fraudulent Judgment Liens, which covered the full State Court Claim of 8/15/97, were entered on First Property on 5/26/00. App. 13-14, 15-16, 17-18, 19-20. On 8/28/01, additional Fraudulent Judgment Liens were placed on Second Property. App. 25-26, 27-28.

8. Plaintiff avers that the Fraudulent Judgment Liens were uncovered for the first time when Plaintiff went to Town Hall on 7/20/01 to pay taxes. Plaintiff avers that he sent to Superior Court, Milford, CT on 7/20/01, a Motion to Open and Set Aside the Judgment. App. 22, 23.

9. Motion to Vacate the Fraudulent State Court Judgment of the Milford Superior Court was filed on 8/7/01. Defendant received a new revived State Court Complaint and Summons on 9/4/01. Milford Superior Court was sent Notice of Removal toU.S. District Court on or about 9/6/01.

10. District Court Judge Underhill Remanded to State Court on 9/26/01 sua sponte. Motion to Vacate Fraudulent State Court Judgment dismissed by Superior Court on 9/10/01; and appealed to Appellate Court on 10/1/01. Appellate Court Ordered Defendant to file Brief on 12/7/01. Defendant avers that his Brief was filed on 12/3/01, and that he filed all the other documents timely.

11. Plaintiff avers that Gonillo, instead of filing a Brief, on 1/2/02, when it was due, filed two motions in Appellate Court: (1) Motion for Permission to File Late Brief; and (2)

Motion to Dismiss Appeal, and Monetary Sanctions. App. 39,40,41,42,45. Both those motions were filed 4 weeks late. The Court Granted the Motion to Dismiss Appeal on 2/21/02, and Ordered a Hearing that relates to Monetary Sanctions against Plaintiff to take place on 3/20/02. At that Hearing, Sanctions of $1,485.00 were Ordered against Plaintiff/Lipko to pay to Attorney Gonillo. App. 30.

12. Complaint was filed with the U.S. District Court on 3/19/02 under Violation of Civil Rights Clause, Title 28:1343; 42 U.S.C.A. 1985, 1983 and 1981. Plaintiff avers that he is under the jurisdiction of the Federal Court as of the date of filing, 3/19/02. He also avers that he filed an Application for a Temporary Restraining Order with Judge Underhill on 4/10/02, to prevent Defendants from taking any action against Plaintiff's property during this litigation. District Court Judge Underhill dismissed the application for a temporary restraining order on 5/9/02. App. 31-34.

13. Appeal was taken to 2nd Circuit Appeals Court on 5/21/02. The application for an interlocutory injunction, TRO, and declaratory relief was heard before a three-judge 2nd Appeals Court on 6/13/02; and denied based on their declining to intervene in a State proceeding to enjoin the pending State civil proceeding. App. 35.

14. Pursuant to the Supreme Court Rule 29, Application to Stay the Enforcement of the Fraudulent State Court Judgment, proof of service was served on each party to the proceeding on 6/7/02. Also, proof of service was sent to each party "Notice of Appeal," on 6/15/02 of the denial of the 2nd Circuit for Emergency TRO, and Injunction, pursuant to Title 28 U.S.C. Secs. 2101 and 1253.

15. Plaintiff has filed an Independent Action for Fraud Upon the Court – Extrinsic Fraud in the U.S. District Court. District Court Judge Underhill has to rule on Fraud Upon the Court. On 5/26/00, Judgment was rendered and entered by

the Superior Court, Judicial District of Ansonia/Milford, in which Margaret Christie, et al., were Plaintiffs, and this Petitioner was Defendant, by which it was adjudged that Judgment Liens (mentioned above) were placed on property.

15. The most recent harassment by law enforcement in Connecticut occurred on the night of 6/15/02. The Plaintiff's family was getting in bed when they heard someone with flashlights going around their house, yelling: "Come out, we know you're in there." Then they heard a loud knock on the front door, and the voices said: "Open the door. This is the Police, or we will break the door down". The Plaintiff opened the door and two Milford Police Officers ordered the family out of the home; half-dressed and half asleep. Plaintiff proceeded to ask the Police Officers why they ordered the family out of their home into the night at mid-night. The Police answered that someone had complained that they saw flashlights on the property. Plaintiff asked: "Who was the person who complained?" The Police said: "We investigate all complaints ...We will ask the questions from now on." The Plaintiff and his family use flashlights every time they arrive at the house when it's dark. The Police also had flashlights lit as they went around the house.

17. This is not the first time that the Milford Police Department has come on Plaintiff's property uninvited. In April of 1999, two Police Officers, a male and a female, ran across his property. When Plaintiff came out of his house and confronted the Police Officers, they ordered him to produce a driver's license, stating that they saw flashlights and thought Plaintiff and family were burglars. Plaintiff ran into the house, stating that "my family will tell you who owns this property." A family member came out to tell the Officers that "we own the property". The female Officer stated that: "You look like a burglar because you have a ski mask on," and left the property. Plaintiff had a ski cap on that night because it was cold, but he had it on the top of his head, not down over his face.

18. Now, back to midnight, 6/15/02. The two male Police Officers continued to interrogate Plaintiff and family, splitting them apart and asking who owns this property. Plaintiff proceeded to unlock the 5-foot gate and fence that surrounds the whole property, and to tell the Officers, at least a dozen times, that Plaintiff owns this property. Both Officers ignored that fact, that Plaintiff owns the property and has a 6-foot fence around the whole property. Plaintiff did not want the Officers on his property; nor did he ask for their assistance. Plaintiff produced the keys to the house and showed the Officers that the key unlocked the lock. Plaintiff and his family were very tired and wanted to go to bed.

ARGUMENT – STANDARD OF REVIEW
REASONS FOR GRANTING THE WRIT

1. The Probate Judge (B. Joy) Ordered the Attorney for the Estate (Gonillo) and the Estate Rep.(Christie) to distribute the Estate on 8/14/95, to this Beneficiary, and they refused.(Certified Order in Motion for TRO Ex.). App. 1, 2.

2. Petitioner herewith seeks Injunctive and Declaratory Relief against continued enforcement of the procedural provisions of the State of Connecticut Statutes that authorize prejudgment replevin. Petitioner challenges the judgment of the Superior Court Milford as being Fraudulent, and charges the Defendants with Fraud, and challenges the extra-judicial process of prejudgment seizure of Petitioner's property as Fraudulent. The court of equity has no jurisdiction over prosecution. Equity may, in the absence of an adequate remedy at law, protect property rights, to restrain prosecutions under unconstitutional statutes. Truax v. Raich, 239 U.S. 33; Speight v. Slaton, 415 U.S. 333.

3. The question is whether these statutory procedures violate the 14th Amendment's guarantee that no State shall deprive any person of property without due process of law.

This Court has dealt over and over again with the question of what constitutes "the right to be heard" (Schroeder v. New York, 371 U.S. 208) within the meaning of procedural due process. Mullane v. Central Hanover Trust Co., 339 U.S. 306. In the latter case, this Court said that the right to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." 339 U.S., @ 314.

4. For more than a century, the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." Baldwin v. Hale, 1 Wall. 223, 233. See Windsor v. McVeigh, 93 U.S. 274. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552. The Connecticut replevin process guarantees no opportunity for a hearing after the seizure of property or the person. Petitioner alleges that the actions of the State judicial and law enforcement officials are depriving him of rights protected by the 1st, 4th, 8th and 14th Amendments. Relying upon 42 U.S.C. Sec. 1983, petitioner asks for injunctive and declaratory relief against the State Court proceedings, on the ground that Connecticut laws were being unconstitutionally applied by the State courts so as to cause him great and irreparable harm, and where the state law is "flagrantly and patently violative of express constitutional prohibitions, and where the State proceeding is conducted with an intent to harass or in bad faith, or the challenged statute is flagrantly and patently unconstitutional. Huffman v. Pursue, Ltd. 420 U.S. 592. The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary

encroachment—to minimize substantively mistaken deprivations of property, a danger that is especially great when the State of Connecticut seizes property and the person simply upon the applicaton of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional history, that we place on a person's right to enjoy what is his, free of governmental interference. Lynch v. Hshld. Finance 405 U.S. 538.

5. The requirement of notice and an opportunity to be heard raises no barrier to the taking of a person's possessions. But the fair process of decision making that it guarantees works, by itself, to protect against arbitrary deprivation of property. For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, unfair deprivations of property interests can be prevented. It has long been recognized that "fairness can rarely be obtained by secret hearings ... [And no] better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." Joint Anti-Fascist Ref.Com.v. McGrath, 341 U.S. 123.

6. If the right to notice and a hearing is to serve its full purpose, then it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. "This Court has not ... embraced the general proposition that a wrong may be done if it can be undone." Stanley v. Illinois, 405 U.S. 645.

7. The right to a prior hearing has long been recognized by this Court under the 14th and 5th Amendments. This

Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. E.g., Wisconsin v. Constantineau, 400 U.S. 433; Mullane v. Central Hanover Tr. Co., supra, @ 313; Londoner v. City & County of Denver, 210 U.S. 373; In re Ruffalo, 390 U.S. 544.

8. The Connecticut prejudgment replevin statutes fly in the face of this principle. The requirements permit a private party, without a hearing (Connecticut Statute 52-515) or prior notice to the other party, (52-517), to obtain a prejudgment writ of replevin, through a summary process of ex parte application to a court clerk, upon the posting of a bond for double the value of the property to be seized. (52-518). The sheriff is then required to execute the writ by seizing the property. The officer seizing the property must then keep it for three days. (52-521). During that period the defendant may reclaim possession by posting his own security bond for double the property's value, (52-521) in default of which the property is transferred to the applicant for the writ, pending a final judgment in the underlying repossession action.(52-522, 524). In Connecticut, either party or a third person can claim statement of title to the property, (52-525) and to secure a post-seizure hearing the party losing the property through replevin must himself initiate a suit to recover the property. (52-529). App. 47-49.

9. A bond requirement is no substitute for the right to a prior hearing, that is the only effective safeguard against arbitrary deprivation of property. While the existence of these other, less effective, safeguards may be among the considerations that affect the form of hearing demanded by due process, they are far from enough by themselves to obviate the right to a prior hearing of some kind.

10. The right to a prior hearing, of course, attaches only to the deprivation of an interest encompassed within the 14th Amendment's protection. In this case, Fuentes v. Shevin,

407 U.S. 67, the Florida and Pennsylvania statutes were applied to replevy chattels in the appellants' possession. The replevin was not a final judgment; most of the appellants lacked full title to the chattels; and their claim to continued possession was a matter in dispute. The chattels at stake were no more than an assortment of household goods. Clearly the appellants were deprived of possessory chattels that were within the protection of the 14th Amendment.

11. A deprivation of a person's possessions under a prejudgment writ of replevin, may be only temporary. The Connecticut statutes do not require a person to wait until a post-seizure hearing and final judgment to recover what has been replevied. Within three days after the seizure, the statutes allow him to recover the goods if he, in return, surrenders other propery, a payment necessary to secure a bond—the value of the goods seized from him; but it is now well settled that a temporary, nonfinal deprivation of property is nonetheless a "deprivation" in the terms of the 14th Amendment. Sniadach v. Family Finance Corp. 395 U.S. 337[1]; Bell v. Burson, 402 U.S. 535. Both Sniadack and Bell involved taking of property pending a final judgment. In both cases, the challenged statutes included recovery provisions, allowing the defendants to post security to re-gain their property. The Court firmly held that these were deprivations of property that had to be preceded by a fair hearing.

12. The present case, Lipko, is no different. When State of Connecticut Court Officers seized the properties of the petitioner's possession and then agree to return it if he

[1] Since the announcement of this Court's decision in Sniadach summary prejudgment remedies have come under constitutional challenge throughout the country. The summary deprivation of property under statute, very similar to Connecticut's as issue here, has been held unconstitutional by at least two courts. Laprease v. Raymours Furniture Co. 315 F. Supp. 716 (NDNY).

surrenders another, they deprive him of property whether or not he has the funds, the knowledge, and the time needed to take advantage of the recovery provision.

13. The 14th Amendment makes no special requirement around 3- or 50- day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind.

14. The 14th Amendment's protection, however, has never been interpreted to safeguard only the rights of undisputed ownership. Rather, it has been read broadly to extend protection to "any significant property interest," Boddie v. Connecticut, 401 U.S., @ 379, including statutory entitlements. Bell v. Burson, 402 U.S., @ 539; Goldberg v. Kelly, 397 U.S., @ 262. Clearly, their possessory interest in the goods, dearly bought and protected by contract, was sufficient to invoke the protection of the Due Process Clause.

15. The appellants were deprived of such an interest in the replevied goods—the interest in continued possession and use of the goods. See Sniadach v. Family Finance Corp., 395 U.S., @ 342. Their ultimate right to continued possession was, of course, in dispute. If it were shown at a hearing that the appellants had defaulted on their contractual obligations, it might well be that the sellers of the goods would be entitled to repossession. But even assuming that the appellants had fallen behind in their installment payments, and that they had no other valid defenses, that is immaterial here. The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. "To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." Coe

v. Armour Fertilizer Works, 237 U.S. 413. It is enough to invoke the procedural safeguards of the 14th Amendment that a significant property interest is at stake, whatever the ultimate outcome of a hearing on the contractual right to continued possession and use of the goods.

17. Some District Courts have rejected appellant's constitutional claims on the ground that the goods seized from them—a stove, a sterio, etc.—were not deserving of due process protection, since they were not absolute necessities of life. The Courts based this holding on a very narrow reading of Sniadach v. Family Finance Corp., supra, and Goldberg v. Kelly, supra, in which this Court held that the Constitution requires a hearing before prejudgment wage garnishment and before the termination of welfare benefits. They reasoned that Sniadach and Goldberg, as a matter of constitutional principle, established no more than that a prior hearing is required with respect to the deprivation of such basically "necessary" items as wages and welfare benefits.

18. This reading of Sniadach and Goldberg reflects the premise that those cases marked a radical departure from established principles of procedural due process. They did not. Both decisions were in the mainstream of past cases, having little or nothing to do with the absolute "necessties" of life but establishing that due process requires an opportunity for a hearing before a deprivation of property takes effect.[2] E.g. Central of Georgia v. Wright, 207 U.S. 127; Seewrity Trust Co. v. Lexington, 203 U.S. 323. In none of those cases did the Court hold that this most basic due process requirement is limited to the protection of only a few types of property interests. While Sniadach and Goldberg

[2] The Supreme Court of California recently put the matter accurately: "Sniadach does not mark a radical departure in constitutional adjudication. It is not a revulet of wage garnishment but part of the mainstream of the past procedural due process decisions of the United States Supreme Court." Randone v. Appellate Dept. 5 Cal. 3d 536.

emphasized the special importance of wages and welfare benefits, they did not convert that emphasis into a new and more limited constitutional doctrine.[3] Nor did they carve out a rule of "necessity" for the sort of nonfinal deprivations of property that they involved. That was made clear in Bell v. Burson, 402 U.S. 535, holding that there must be an opportunity for a fair hearing before mere suspension of a driver's license.

19. The household goods, for which the appellants contracted and paid substantial sums, are deserving of similar protection, while a driver's license, for example, "may become indirectly essential in the pursuit of a livelihood." No doubt, there may be many gradations in the "importance" or "necessity" of various consumer goods. Stoves could be compared to television sets, or beds could be compared to tables. But if the root principle of procedural due process is to be applied with objectivity, it cannot rest on such distinctions. The 5th and 14th Amendment speaks of "property" generally. And, under our free-enterprise system, an individual's choices in the marketplace are respected. It is not the business of a court adjudicating due process rights to make its own critical evaluation of those choices and protect only the ones that are "necessary".[4]

20. A prior hearing always imposes some costs in time, effort, and expense, and it is often more efficient to dispense with the opportunity for such a hearing. But these rather ordinary costs cannot outweigh the constitutional right. See

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[3] Goldberg v. Kelly, 397 U.S. 254. Of course, the primary issue in Goldberg was the form of hearing demanded by due process before termination of welfare benefits; the importance of welfare was directly relevant to that question.

[4] The relative weight of liberty or property interests is relevant, of course, to the form of notice and hearing required by due process. See Boddie v. Connecticut, 401 U.S. 371. But some form of notice and hearing—formal or informal—is required before deprivation of a property interest that "cannot be characterized as de minimis." Sniadach, Supra, @ 342.

Bell v. Burson, supra, @ 540-541; Goldberg v. Kelly, supra, @ 261. Procedural due process is not intended to promote efficiency or accommodate all possible interests: it is intended to protect the particular interests of the person whose possessions are about to be taken. "... But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones." Stanley v. Illinois, 405 U.S. 645.

21. The Connecticut prejudgment replevin statutes serve no such important governmental or general public interest. They allow summary seizure of a person's possessions when no more than private gain is directly at stake.[5]

22. The State of Connecticut Statutes 52-515-525, abdicate effective control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No official participates in the decision to seek a writ; no official reviews the basis for the claim to repossession; and no official evaluates the need for immediate seizure. There is not even a requirement that the litigate provide any information to the court on these matters. App.47-49.

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[5] By allowing repossession without a prior hearing, the Connecticut statutes may be intended to reduce the cost for the party seeking to seize goods in another party's possession. Even if the private gain at stake in repossession actions were equal to the public interests recognized in this Court's past decisions, the Court has made clear that the avoidance of the costs imposed by the opportunity for a hearing is not sufficient to override the constitutional right. The Courts holding in Sniadach, indisputably demonstrates that hearing costs are no more able to override due process rights in the creditor-debtor contexts than in other contexts.

23. The plaintiffs seized petitioner on 2/29/96, and caused petitioner to attend 40 court appearances over 6 years. Petitioner alleges that malice is implied "by the lack of probable cause" in the underlying prosecution of his 4th Amendment rights. Gonillo and Christie made material misstatements of fact: "They cannot close the Estate because Lipko keeps appealing," in support of the prosecution. Whitney v. Traylor, 85 F.3d 581. Knowingly making false statements to obtain prosecution can lead to a 4th Amendment violation. U.S. v. Martin, 615 F.2d 318. App.8, 9,10.

24. District Judge Underhill denied the Petitioner's TRO stating, "Section 1983 may not be used as a substitute for the right of appeal in the State Courts, ... are in all liklihood barred by the Rooker-Feldman Doctrine, ... this Court lacks subject matter jurisdiction over them by operation of the Rooker-Feldman Doctrine." Numerous courts have interpreted Rooker as a broad rule that federal district courts have no jurisdiction to entertain a claim made by the losing party in state court that would in effect nullify the state court decision. Brown v. Chastain 416 F.2d 1012. However, the district court's lack of appellate jurisdiction is to be distinguished from a separate suit based on constitutional deprivations effectuated by the judgment. Gresham Park Community Organization v. Howell 652 F.2d 1227. Brown's test based upon its interpretation of Rooker, is consistent with a line of the 5th Circuit cases. Under Brown, the district court would have no jurisdiction to enjoin the enforcement of the state court order. However, the law in this area is confused by, a conflict between the Brown line of cases, and on the other, Supreme Court decisions which, in situations identical, have found abstention proper, thus implicitly holding that there is federal court jurisdiction. Huffman v. Pursue Ltd. 420 U.S. 592. (abstention proper, where plaintiff essentially sought to enjoin enforcement of state court injunction) In Lipko the state trial court issued a pemanent injunction and a judgment. In Rooker , the federal plaintiffs sued in district court praying that a state court

judgment be declared void on constitutional grounds. In Lipko, injunction violated the Constitution of Connecticut, Article 1, Sec.10, and the due process, and equal protection provisions in the 14th Amendment of the U.S. Constitution. It denied Lipko the right to appeal a judges decision, and was motivated in bad faith and harassment, and the State law is flagrantly and patently in violation of express constitutional prohibitions. Dombrowski v. Pfister 380 U.S. 479; Juidice v. Vail, 430 U.S. 327. (abstention proper where plaintiffs sought to enjoin enforcement of state court contempt order). In Lipko, this Court is asked to nullify the State Court Order of Sanctions, and Vacate the Judgment Liens. However, to abstain is implicitly to assert that the Court has power to hear the case if the Younger exceptions existed. Mitchum v. Foster 407 U.S. 225. The Brown rule is further cast in doubt by Henry v. First National Bank of Clarksdale, 595 F.2d 291 (Henry II). In Henry I, a group of white merchants sued in state court to enjoin a boycott of their stores. The state's defendants instituted a 1983 action in federal court. Under the Henry opinions, federal courts in such situations, have no jurisdiction until a state court judgment is entered; under Brown, district courts have no jurisdiction to modify the effect of a state court judgment. If Brown is correct, then Henry I should have held the district court to be forever without power to hear the case and Henry II should have remanded for dismissal for lack of jurisdiction.

25. The Brown rule also implicitly conflicts with cases following Mitchum v. Foster, 407 U.S. 225, in which the Supreme Court held that Sec.1983 suits are an exception to 28 U.S.C. Sec. 2283; under Mitchum, Sec. 2283 does not bar a federal injunction against enforcement of a State court judgment. E.g. Huffman; and Henry II, 2, 300. We, hence, are confronted with conflicting precedents: The Brown cases on the one hand; the abstention, res judicata, Mitchum, and Henry cases on the other. Brown's conflict with numerous Supreme Court cases and with the weight of Fifth Circuit authority compels us to reject Brown. With respect

that accorded it by Brown, Rooker, also, would conflict with the above cases, including Supreme Court decisions which would have overruled Rooker sub silentio. There are two ways to read Rooker so that it does not conflict with the cases discussed supra. First, Rooker could have turned upon the fact that the federal plaintiffs prayed for the State court judgment to be declared null and void (as violative of the Constitution), See Tang v. Appellate Division of New York Supreme Court, 487 F.2d 138, if, instead, the plaintifs had prayed for an injunction enjoining enforcement of the judgment, then under this theory, Rooker would not have relied on the district court's lack of appellate jurisdiction. The difference, obviously, is that in the former situation, but not the latter, the district court was asked to vacate the State judgment, an exclusively appellate act. If this was the theory underlying Rooker, then Rooker was overruled by Fed.R. Civ. P. 8, enacted in 1938, under which complaints should be read liberally to do substantial justice.

26. Regardless of which way Rooker is read, the precise language of the complaint is not crucial, since we construe complaints liberally. Second, if the district court has original jurisdiction, and does not have appellate jurisdiction, district courts are courts of limited jurisdiction. Atlantic Coast Line R.R. Co. v. Brotherhood of Loco. Eng. 398 U.S. 281. It is to this issue, whether the district court has original jurisdiction, that Plaintiff now turns. District Courts determine jurisdiction under Sec. 1343(3) as of the date the federal complaint was filed, 3/19/02, at which point the state court had issued its dismissal and refused to hear the appeal, Ordered the hearing on Sanctions against the Plaintiff on 3/20/02, motivated by bad faith and harassment, and the state law is flagrantly and patently in violation of express constitutional prohibitions, 42 U.S.C. Sec. 1983. A complete discussion of Rooker is found in "Memorandum of Law in Support of Motion in Objection to a Motion to Dismiss," dated 5/20/02.

27. Here, the question of original jurisdiction turns on whether Plaintiff's complaint is a separate suit, and is sufficient to give the District Court jurisdiction and 28 U.S.C. Sec. 1343(3) which provides: the district courts shall have original jurisdiction of ... civil action ... any person; ... citizens ... The language of Sec.1343 (3) is similar to that of Sec. 1983, providing a cause of action of deprivations of a constitutional right under color of State law. The two sections should be construed identically. Exam. Bd. of Eng. Arch & Surv. V. Flores de Otero, 426 U.S. 572. Section 1343(3) was enacted "simply to enforce the substantive rights created by 1983," Lynch v. Hshd Fin., 405 U.S. 538.

28. A plaintiff must prove a deprivation of "right secured by the Constitution" and that the deprivation was under color of State law. ... To satisfy the first requirement, the plaintiff must show that the defendants' action constituted State actions (assuming that the constitutional right at issue is one protected only against government infringement). Flagg Bros. Inc. v.Brooks, 436 U.S. @ 155,156, 98 S.Ct.@ 1733. Amendment 14, Rights Guaranteed: A State court makes a ruling arguably infringing on the 4th and 14th Amendments' rights and the ruling is based on a State created prohibitory rule, be it common law or statutory, an otherwise private suit loses its private nature and takes on the requisite state action necessary for Civil Rights Act Jurisdiction. Gresham Park Com. Org. v. Howell, 652 F.2d 1227. Gonillo and Christie prosecuted petitioner at trial without probable cause, because the Probate Judge Ordered them to distribute the residue of the Estate and they refused. Petitioner states that Gonillo and Christie manufactured probable cause, fabricated evidence, prosecuted, held petitioner in custody of the legal system despite a lack of probable cause to do so; and that Gonillo and Christie and others conspired to maliciously prosecute and testify against petitioner. Among those constitutional rights violated was the 4th Amendment. Spurlock v. Satterfield, 167 F.3d 995. The court, citing an

earlier decision said, "The right to be free from malicious prosecution was a right clearly established under the 4th Amendment." Id. @ 1006. Petitioner, states that Defendants violated petitioner's 14th Amendment due process rights by trying to sell petitioner's home on 6/15/02, with a State Order. App.56-59.

29. Action with knowledge of and pursuant to state law is a minimal requirement to satisfy the under color of state law test for Civil Rights Act jurisdiction purposes, where the alleged state action is based on a private party's actions and such party has no authority or pretence of authority to act as state's agent and is not compelled to act for the State. 28 U.S.C.A. Sc. 1343(3); 42 U.S.C.A. Sec. 1983. Gresham Park Com. Org. v. Howell, 652 F. 1227.

30. This Court has consistently held that a private party's joint participation with state officials in the seizure of petitioner's property is sufficient to characterize that party as a "state actor" for purposes of the Fourteenth Amendment. The rule in these cases is the same as in the context of equal protection deprivation. Adickes v. S.H. Kress & Co. 398 U.S.144 Supra @ 152. Private persons, jointly engaged with State of Connecticut officials in the prohibited action are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State of Connecticut. It is enough that he is a wilful participant in joint activity with the State or its agents. United States v. Price, 383 U.S., @ 794. Defendants, as state actors, in concert with state officers acted jointly with the State, where there was usurpation or corruption of official power in securing the property of the petitioner.

31. The Rooker-Feldman Doctrine does not apply in the Lipko case, for the following reasons: The judgment of $206,000.00 was never affirmed by the Connecticut Appellate or Supreme Court. Had the Petitioner appealed the judgment of the Superior Court to the Supreme Court of

Connecticut, and the Court ruled on it, then the judgment of the Superior Court would be valid. A judgment is not "immediately enforceable" until the State Supreme Court has ruled on it on appeal. Gresham Park Community Organization v. Howell 652 F.2d 1227. The District Court, under the circumstances of the Lipko case, has the power to relieve a party from a judgment, either by motion under Rule 60(b) or by an Independent action because the Petitioner did not appeal to the Connecticut Supreme Court. However, the Rule 60(b), while enlarging the power of District Courts over judgments, does not confer upon District Courts the power to alter a judgment which has been affirmed by the State Supreme Court for such alteration would affect the decision of the reviewing court, which is not within the power of the District Court to do. Judgments, Rule 60(b). In the following case it was held that, while certain motions brought pursuant to Rule 60(b) of the Fed R Civ P have a 1-year time limitation. Independent actions are not so limited. Serzysko v. Chase Manhattan Bank (2nd Cir.) 461 F2d 699.

32. The majority's decision is inconsistent with this Court's decision in Heck v. Humphrey, 512 U.S. 477. The question is, "was whether money damages premised on an unlawful prosecution could be pursued under Sec. 1983." 512 U.S. at 480. The Court said the

> "common-law cause of action for malicious prosecution provides the closest analogy to claims of the type considered here because, unlike the related cause of action for false arrest or imprisonment, it permits damages for confinement imposed pursuant to legal process. ...[A] successful malicious prosecution plaintiff may recover, in addition to general damages, 'compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of the society.'"

Id. at 484.

33. In Gallo v. City of Philadelphia, 161 F.3d 217(1998), a Third Circuit case finding pre-trial restrictions without incarceration to be a seizure. This Court has recognized the right to seek redress for such misconduct. As it said in Heck v. Humphrey, 512 U.S. 477, causes of action such as Mr. Lipko's, permit citizens to seek "damages for confinement imposed pursuant to legal process," damages which can include "'compensation for any detention or loss of liberty, including damages for discomfort or injury to his health, or loss of time and deprivation of the society.'" 512 U.S. at 486. The Fourth Amendment is a barrier, which, if it cannot prevent misconduct, at least provides an avenue for redressing the injury caused by the misconduct.

34. This Court has said 1983 malicious prosecution claims are permissible and has intimated that the 4th Amendment is a vehicle for pursuing such claims. As the dissent below noted, the Third Circuit in Hilferty v. Shipman, 91 F.3d 573 (1996), after Albright v. Oliver, 510 U.S. 266, re-recognized the validity of Sec.1983 malicious prosecution claims. The dissent also noted "the fact that a majority of the other courts of appeals that have considered the issue, as well as a great number of district courts in this circuit, have similarly held that constitutional malicious prosecution claims survive Albright and that such claims must be brought under the 4th Amendment." 163 F.3d at 183.

35. Civil Rights, Sec.114. Since gist of claim for malicious prosecution is abuse of judicial process, plaintiff pursuing such claims under Section 1983 must show that seizure resulted from initiation or pendency of judicial proceeding 42 U.S.C.A. Section 1983. Murphy v. Lynn, 118 F.3d 938 (2nd Cir.). Const. Amend. 4—Liberty deprivations regulated by 4th Amendment are not limited to physical detention. Damages allowed compensatory damages: $50,000.00. The fact that Connecticut law provided remedy

preclude defendant from pursuing Sec.1983 action against court officers arising from "seizure" that required that he attend court appointments. To state claim for tort of "malicious prosecution" under Connecticut Law, plaintiff must prove initiation or continuation of proceeding against plaintiff, lack of probable cause for commencing proceeding, and actual malice as motivation for defendant's action.

36. Petitioner alleges that malice was implied "by the lack of probable cause in his prosecution". He also says Gonillo and Christie made material misstatements of fact in support of the prosecution. Making false statements to obtain an arrest warrant or prosecution treated as an independent violation of the 4th Amendment. Pierce v. Multnomah Cty, Oregon, 76 F.3d 1032.

37. As the Supreme Court stated in Albright v. Oliver 510 U.S. 266 "deprivation of liberty that go hand in hand with criminal prosecutions" have "4th Amendment relevance." 510 U.S. @ 274. In Gerstein v. Pugh, "the 4th Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty" 420 U.S. @ 114 the Court made plain that the liberties protected by that Amendment included; Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships. ... protects against unreasonable "seizures". It is established that an unreasonable seizure by a state actor in violation of this Amendment, may be pursued in a suit brought under Sec. 1983. The Supreme Court of the U.S. has defined seizure: occurs when governmental termination of a person's movement is effected through means intentionally applied. Violations of this Amendment requires an intentional acquisition of physical control. A seizure occurs even when an unintended person or thing is the object of the detention or taking. Hill v. California, 401 U.S. 797. You may consider the requirement to appear in court as being a restriction on his liberty. Murphy v. Lynn 118 F.3d 938. The right of Plaintiffs to be secure in their

persons and effects, as well as on the property against unreasonable seizures, The Constitution of the U. S., 4th Amendment holds: "No right is held more sacred, or is more carefully guarded, by the common law, ... , 'The right to one's person ... said to be a right of complete immunity... ." Terry v. Ohio 392 U.S. 1. "The right of the people to be secure in their ... houses ..., against unreasonable ... seizures, shall not be violated ...". Const., 4th Amendment, Supra.

38. As Justice Ginsburg observed in Albright , a defendant is scarcely at liberty, he remains apprehended, arrested in his movements, indeed "seized" for trial, so long as he is bound, to appear in court and answer the States' charges. He is equally bound to appear, and is hence "seized" for trial, when the state employs the less strong-arm means of a summons in lieu of arrest to secure his presence in court.

39. Injuries compensatory included those associated with the prosecution, insofar as the officers caused them. Whitney v. Traylor 85 F.3d 581. Civil Rights 192—To state Section 1983 claim, plaintiff must point to specific federal right. 42 U.S.C.A. Section 1983. Civil Rights –"federally guaranteed right to be free of malicious prosecution." Courts 508(7)—There is a federal right to be free from bad faith state prosecutions. Shaw v. Garrison 467 F.2d 113 (1972).

40. The Milford Police Department is charged with the following U.S. Constititution and laws Civil Rigits violations: 1st Amendment. The two Police Officers decided to scream and yell at Plaintiff and his family, verbal abuse. They intimidated them by stating that "a warrant for your arrest will be issued in the morning. See you in the morning." 4th Amendment: One of the Officers physically held Plaintiff and family in front of their home, while the other Officer went inside, without their permission, and searched their home without a search warrant, and without probable cause. The other Police Officer would not allow Plaintiff and family to enter their home to see what that

Officer was searching for, or what he was taking with him. Fifth Amendment: The Milford Police deprived Plaintiff and his family of liberty, by holding them for 2.5 hours and questioning them; without probable cause; at midnight, 6/15/02. The Officers told Plaintiff and family: "If you left your home now, and did not come back, we would file a report only; but if you decide to stay, we will file a warrant for your arrest and be back in the morning to arrest the both of you." Amendment VIII: At 2 A.M. Sunday morning, both Officers stated that Plaintiff and his family don't belong in Milford, CT and should leave. Two Milford Police Officers, knowingly and intentionally, and with reckless disregard for the First, Fourth, Fifth, Eighth and Fourteenth Amendments, entered Plaintiff's property, without probable cause. The State has an obligation, under the Eighth Amendment to those under its jurisdiction to be free from cruel and unusual punishment. The Officers tried to force Plaintiff and family off their property, after midnight, by saying they were issuing a warrant for their arrest if they are still on the property when they came back in the morning (Sunday morning). Amendment XIV: ...nor deny to any person ... the equal protection of the law. The Officers stated that we don't belong in Milford, CT and should leave. The 14th Amendment imposes a duty on Municipal Police Officers to charge and detain only upon ascertaining probable cause. These two Officers had no probable cause. They charged Plaintiff and family by information from someone else, and that information was false; and restrained them pending their determination after they reviewed the information that, Plaintiff and family, under duress, gave to them. They ordered Plaintiff and his family to give them their name, address, date of birth, and wanted to see a driver's license. The purpose of obtaining this information was to turn it over to Gonillo, which is profiling.

41. Plaintiff has been deprived of a right secured by the laws of the U.S., 1st Amendment: Gonillo denied Plaintiff this right to petition the court by having his appeal on

2/21/02 dismissed without even being considered. (See TRO, Ex.I, filed 4/10/02). "... even exercise of right to petition government may result in abuse actionable under Sec. 1983, U.S.C.A. Const. Amend. 1; Fox News Network v. Time Warner Inc. 062 F. Supp. 399 (E.D.N.Y. 1997).

42. Plaintiff has been deprived of a right "secured by the Constitution and laws of the U.S." The 4th Amendment requires of the States, a judicial or neutral determination of probable cause to seizure as a prerequisite for extended restraint of liberty, 420 U.S. @ 114, 95 S.Ct. @ 863, and specifically that an attorney's(Gonillo) decision to prosecute is not constitutionally sufficient determination of probable cause. 42 U.S. @ 112-113, 116-17, 95 S.Ct. @ 864-65. Before any person is seized by the State of Connecticut, someone must first have determined that there was probable cause to prosecute that person. The second is policy; It is difficult for this Plaintiff to conceive a notion more repugnant to the ideas of due process than one that Gonillo need have no basis whatever for prosecution of this Plaintiff, even trivial ones, but may, without constitutional disapproval, subject whomever Gonillo wishes to whimsical prosecution. Singleton v. City of New York, 632 F.2d 185. This portion of Gerstein holding proceeds from the fact that the 4th Amendment's requirement of probable cause to seizure has been incorporated into the 14th Amendment due process clause and is thus applicable to the States. Gerstein v. Pugh, 420 U.S. 103; Wolf v. Colorado, 338 U.S. 25. Plaintiff has been deprived of a right "secured by the Constitution and Laws of the U. S.", 5th Amendment: Gonillo tried to take Plaintiff's private property without due process of law on 4/15/02, by having an ex parte hearing, which Plaintiff knew nothing about. Gibson v. City of Seattle Police, 472 F. 72 1220. Civil Rights 192, Sec.1983 was enacted to provide redress for deprivation of rights caused by abuse of authority, 42 U.S.C.A. Sec. 1983. Polk County v. Dodson 454 U.S. 312. Deprived of Liberty: Gonillo, Christie, E. Lipko, class-based ANIMUS, 3 women

against a man, ((App. 7-11) by prosecuting Plaintiff at trial when they knew that the Probate Judge Ordered them to distribute the Residue of the Estate on 8/14/95. Instead of distribution of the Estate as ordered by the Probate Judge, they prosecuted this Plaintiff without probable cause. Velazquez v. City of New York 960 F. Supp. 766.

43. Plaintiff has been deprived of a right "secured by the Constitution and Laws of the U.S", 8th Amendment, Gonillo and Christie knowingly and intentionally, and with reckless disregard for the truth, made false statements which were necessary to the finding of probable cause for prosecution; Gonillo asked Christie: "but is it your claim that because of Mr. Lipko's litigation you were forced to keep this estate open and forced to file further tax returns?" "Yes".App.7-11. Excessive fines: $206.485.00. Damages are recoverable where constitutional rights have been violated... . Herrera v. Valentine 653 F. 2d 1220. The 14th Amendment imposes a duty on State Officers to charge only upon ascertaining probable cause. It follows that Gonillo can be liable for subverting the performance of duty by maliciously tendering false information to a Judge, which leads the judge to believe probable cause exists where there is none. Since this violates federally guaranteed rights, it is grounds for a 1983 action.

44. Plaintiff avers that instead of distribution of the Estate, Defendants refused to distribute his portion, $24,014.34, of the Estate on 8/14/95. The Testimony of the Plaintiffs on 4/8/96: Gonillo: "I really don't want to close that, have Mrs. Christie do the affidavit of closing until such time as Mr. Lipko decides whether he is going to file an appeal to your –," Tr., Rush, 4/8/96, App. 4-6.

45. State Court Defendant has established that the State prosecution has been instituted in bad faith and for purposes of harassment or "official lawlessness". Irreparable injury, e.g. Title 28, U.S.C. Sec. 1343, need not be shown provided there is present a basis for Federal jurisdiction and 42 U.S.C.

1983. Consequently, federal equitable intervention in a civil proceeding is proper where there is a showing that the State Courts proceedings are motivated by bad faith or harassment or where the applicable State Law is flagrantly and patently violative of express constitutional prohibitions. Mitchum v. Foster 407 U.S. 226. Plaintiff avers that irreparable damage will occur to his family in the absence of a plain, adequate and complete remedy at law. Further, Plaintiff avers that the Appellate Court's dismissal of Plaintiff's appeal on 2/21/02 was motivated by bad faith and harassment; and the State Law is flagrantly and patently in violation of express constitutional prohibition, Sec. 1983.

46. The judgment liens, which were placed on property, are improper, and are intended to foreclose on property. The first judgment liens on property will fail because the judgment was based on fraud, and the Court had no jurisdiction over the Defendant. The second Judgment Liens placed on property, on 8/28/01, are against the constitutional prohibitions and are based on the first judgment liens placed on property. They must fail because the first will fail.

47. Invalidity of 2nd Judgment Lien on Second Property: A judgment cannot be enforced by a procedure in revival if it violates constitutional prohibitions, because res judicata does not protect an unconstitutional confessed judgment. Consequently, when a court finds that the "old" confessed judgment which that judgment underlies is unconstitutional as well, and must fall with it. In re Souders (BC Ed Pa) 75 Br 427 (disapproved on other grounds by In re FRG, Inc. (CAS Pa) 919 F2d 850,24 CBC 2d 40).

48. Petitioner has a good defense as follows: Defendants were ordered to distribute the Estate. See App. 50-51, where Defendants stated delay in closing the Estate; and Petitioner was not under the jurisdiction of State Courts when Judgment was rendered, having appealed to the Supreme Court of the U.S. App. 29. Defendant was prosecuted without probable

cause by the State of Connecticut. Plaintiff avers that the Order of the Court, dated 3/20/02 for a hearing that relates to Monetary Sanctions against Plaintiff is motivated in bad faith and harassment; and that State Law is flagrantly and patently in violation of express constitutional prohibitions. Sec. 1983. App. 30. Plaintiff avers that on 3/18/02, the Appellate Court clerk was handed an original copy of the Jurisdiction Notice,(App. 24) and that she stated that she was not taking the notice. The clerk conspired with Gonillo or the case manager, to not take the Notice. Sec. 1985, conspiracies to interfere with civil rights. As to the order of monetary sanctions, for the deprivation of a federally secured right under color of a "custom or usage of (a) State" to be actionable under Sec. 1983, the custom or usage in question must have the force of law by virtue of persistent practices of state officials. Thus, a custom or usage may acquire the force of law in this context even though it has not received formal approval through official channels. Permitting a custom or usage to acquire the force of law in this context recognizes that the settled practices of State Court Officials by imposing sanctions, transform private predilections into compulsory rules of behavior no less than legislative pronouncements. These known constitutional violations by the State Courts are precisely the type of informal policy or custom that is actionable under Sec.1983. Adickes v. Kress & Co. 398 U.S. 144. The state agencies, Grievance Committees, Div. of Criminal Justice (App. 60), and Federal Grievance Committees (App. 37-38) conspired to deprive Petitioner of Civil Rights. Gonillo stated: "I took the file with me when I left Hurwitz & Sagarin because the case got convoluted..." The case never was convoluted. She kept silent that the Probate Judge Ordered her to distribute the Estate. App. 37-38.

49. Testimony at Trial Court, 5/1/97, Gonillo, Estate Attorney, Questioning Mrs. Christie: Q. Has that caused you to pay for accountant fees due to the Estate still being opened? A. Yes. p. 56. Q. But is it your claim that because of Mr. Lipko's litigation you were forced to keep this estate

open and forced to file further tax returns? A. Yes. p. 56. THE COURT: "And the purpose of this is to show the additional expenditures that the estate has incurred because it has remained open all this time". P. 57. Gonillo: "The estate has had to expend sums of money in defending litigation brought by Mr. Lipko". P. 58. Q. When's the next time you came down? A. 8/14/95, the Probate Court hearing accounting was done that day. p. 64. App.9-10.

50. Gonillo and Christie, knowingly prosecuted Plaintiff with information they knew to be false. Wheeler v. Cosden Oil & Chemical 734 F2d 254. The 14th Amendment requires the states to make a determination of probable cause to prosecute. Reeves v. City of Jackson, 608 F.2d 644. A defendant may challenge a 4th Amendment probable cause determination on the ground that it was based on information which the State knew or should have known to be false and that such information was necessary to the finding of probable cause to prosecute. Franks v.Delaware 438 U.S. 154.

51. The purpose of the State ex parte order on 4/15/02 is to cover up the Fraud on the Court. The specific reasons why the Petition should be granted is to prevent substantial loss or impairment of freedoms of expression (1st), probable cause (4th), deprived of liberty and property (5th), excessive fines (8th), and enforcement of judgment (14th Amendment).

CONCLUSION:

This Court should vacate the State Court Judgments; vacate the State Appellate Order for Sanctions; reverse and remand to the District Court.

THE PETITIONER

A. LIPKO JR.